

REMARKS

Double Patenting

The Examiner has provisionally rejected claims 1, 3, 10, and 17 on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 2, 7, 10 of co-pending application publication no. 20050125019. As such, the Applicants submit the attached timely filed terminal disclaimer.

Summary of the Office Action and Applicants' Reply

Claim Rejections-35 USC 102

The Examiner has rejected claims 1-3, 5, 8-11, 26-28, 20, 31, 33, and 34 as being rejected under 35 USC 102(b) as being anticipated by Kheiri (US Pat. No. 6,364,889). The Examiner further explains that Kheiri discloses an electronic lancing device that uses magnetic forces. Applicants respectfully argue that this pending application is not anticipated by the Kheiri patent.

Kheiri discloses an electronic lancing device comprising a housing, a hollow shell, a magnet, a bobbin, a coil, a lancet, and an electronic circuit. The housing is standard housing used with electronic devices with a power button, firing button, and LED display. This housing is generally known and not ambiguous.

The hollow-cylindrical-shaped shell is fixedly mounted within the housing and includes at least one guide arm. The shell houses the magnet and a steel block, and partially houses the bobbin. The shell proscribes the path of motion of a free moving bobbin during out-stroke and in-stroke. Guide arms allow for only translation motion.

The magnet is a cylindrical body that is fixedly mounted with the shell. The magnet comprises a solid, generally cylindrical body that is attached to the bottom of the shell in between a steel block. The steel block brings the majority of the magnetic flux lines to intersect

the coils in order for the electronic device to achieve maximum efficiency. The magnet is generally known in the art.

The bobbin comprises a flat disc in between a first and second tubular body member. The bobbin has an attached coil that is disposed over the magnet. The only way the bobbin moves by way of magnetic force is if an electric current is run through the coil.

The lancet is a needle attached to the bobbin. The electronic circuit comprises a switch, two timing chips, several resistors, and at least two transistors. When a user depresses the firing button, the switch forces trigger the timing chip, which regulates delivery of the bobbin and lancet. The electromagnetic circuit delivers current through the coil creating a repulsive electromagnetic field, causing the bobbin and lancet to be repulsed from the permanent magnet out of the shell. The timing chip regulates the in-stroke to current out of the coil, which creates an attractive magnetic field causing the bobbin and lancet to be attracted to the permanent magnet.

Applicant's claim 1 discloses a lancet device comprising a permanent magnetic element, a member capable of being affected by magnetic forces emanating from the permanent magnetic element, and a lancet movable between a withdrawn position and a piercing position.

Applicant's member and Kheiri's bobbin are quite different. Applicant discloses that the member is capable of being affected by simply magnetic forces that are constant in nature and always attractive, wherein Kheiri's bobbin must be coupled with coil to receive electric current causing the bobbin to move. (Kheiri, Column 4, lines 41-59). Kheiri's device simply waits for the current to be attractive. Therefore, Applicant's member is not anticipated by Kheiri's bobbin.

With respect to Claims 2 and 3, Applicant again respectfully argues that the electric current of Kheiri is not the "arming element" of Kheiri. Kheiri does not need an arming element

as there is no motion until the current is sent. Applicants' device does not utilize electric current and is unique over devices that do use current. Applicants' device simply uses magnets that are constantly attracted and an arming element is needed. Parallels with electric currents are not accurate. A simple magnet is very different from an electromagnetic field.

Claim 5 discloses an activator adapted to release the permanent magnetic element from the armed position to permit movement. Kheiri discloses a firing button to activate an electronic circuit. While the two parts (activator and firing button) both act to initiate movement, this is not just unique to Kheiri. Lancet devices are widely known in prior art and all have mechanisms to initiate movement of a lancet. What is unique about Applicant's is that the activator simply activates magnetic field movement while Kheiri's initiates an electronic circuit. As such, the activator is not anticipated over Kheiri's firing button.

Similar to the activator and firing buttons mentioned above, housing is standard and not unique to Kheiri. Housing is simply a case to hold the device parts. Therefore, Applicant's respectfully argue that the Kheiri housing 10 should not be used to reject Applicant's Claim 8.

Kheiri's device discloses "housing 10 comprising a generally tubular body member with a cover 12 and two ends, a closed rear end 60 and an open front end 65". (Kheiri, Column 4, lines 21-23). Figure 2 distinctly points out rear end 60 and front end 65. Figure 2 is simply an expanded view of Figure 1. When looking at the two figures, it is clear that end cap 25 is not part of the housing 10 as it extends much past front end 65. As such, the end cap 25 is not similar to Applicant's housing (claims 9-11) in which the lancet gets drawn up inside the housing. In Kheiri's device the lancet is drawn up into the end cap 25 which is not part of the housing.

Applicant's Claim 26 is not anticipated by Kheiri because Applicant only uses magnetic force, not electromagnetic forces. Kheiri requires electric current that Applicant does not. Applicant's use of only magnetic is a marked improvement over existing lancet devices that must utilize electric current.

Applicant is slightly unsure of what exactly the rejection is with respect to Claims 27 and 28. In Kheiri and based on the Examiners' explanation, it seems that the bobbin 35 has a generally tubular body member 511 that is disposed over the magnet 50. The body member 511 does not appear to be movable and simply sits over the magnet 50 (Considering Figures 2 and 5). In Applicant's device, one permanent magnetic element and member is free to pass through the other so Applicant is confused as to where the parallels lay. However, if the Applicants are correct in interpreting the Examiner's comments then Applicants device is not anticipated by Kheiri in Claims 27-28 because Applicant's device allows for passing through whereas Kheiri simply discloses a set placement of the bobbin with the magnet.

Applicant has amended Claim 30 to overcome Examiner's rejection.

Kheiri discloses in Claim 1 "An electric lancing device comprising a housing; a ...shell..., a magnet..., a bobbin..., a coil..., a lancet..., an electronic circuit..." (Column 7, lines 61-68, Column 8, lines 1-25. Applicant does not have an electric lancing device and has amended Claim 31 to include "magnetic" when describing the lancet device to overcome Examiner's objections.

Applicant's Claims 33 and 34 is clear that this is simply a magnetic lancet device as stated in Claim 33's preamble. This clearly distinguishes it from Kheiri's electronic lancing device and therefore is not anticipated by Kheiri. Furthermore, Kheiri's device has the magnet fixedly secure between the steel block and steel shell to bring the magnetic forces to intersect the

coils. Applicant's device does not have this limitation as the magnet simply is secured to the inner shaft.

Claim Rejections-35 USC 103

The Examiner has rejected Applicant's claims 4, 6, 7, 12-14, 16-17, 20-22, 23, 29, and 32 as being obvious over Kheiri (described above in detail) in view of LeVaughn (US. Pat. No. 6,197,040).

LeVaughn discloses a lancing device that is spring loaded to activate the lancet. Kheiri's lancet is activated by electromagnetic forces. Electromagnetic forces were considered an improvement over the spring loaded lancets because it could offer a user more control. Applicant's device is activated by permanent magnets only. This aids in cutting down side to side vibration and allows for quick pricking of the skin.

With respect to Claim 4, since Kheiri is not a permanent magnet device, it would not have been obvious to add a lever member as one would not be necessary since the device will not activate without an electric current. The lever in Applicant's device is to hold the member or permanent magnetic element in place since the magnets create a constantly attracted state. As such, Applicant's argue that Claim 4 is not obvious over Kheiri in view of LeVaughn.

Claim 6 has been amended to better reflect the permanent magnetic element to overcome Examiner's objections in view of Kheiri.

The Examiner rejects Claim 7 based on the arguments presented with respect to Claim 3. Applicant's therefore repeat their argument with respect to Claim 7 in that electric current of Kheiri is not the "arming element" of Kheiri, it is simply the manner in which Kheiri's device is activated. Applicants' device does not utilize electric current and is unique over devices that do

use current. Applicants' device simply uses magnets so parallels with electric currents are not accurate. A simple magnet is different from an electromagnetic field.

Applicant's Claim 12 has been cancelled.

Applicant's collar is not the same as the member and Applicant has clarified this in the Claim 6. As such claim 14's collar is not the same as Kheiri's bobbin.

As argued above when discussing claims 9-11, Kheiri's end cap is not part of the housing but is in fact a separate feature. As such, the end cap 25 is not similar to Applicant's housing (claims 9-11, 14) in which the lancet gets drawn up inside the housing. In Kheiri's device the lancet is drawn up into the end cap 25 which is not part of the housing.

In Kheiri, it is not necessary to prevent movement in the armed position because if there is no electric current, there will be no movement. As such, it is not obvious that one would need to modify the teeth of LeVaughn to that of a circumferential manner on the bobbin of Kheiri. However, when magnets are continually attracted as in Applicant's device, it would be necessary to control the armed position. Because of this difference, Claims 21, 22, and 32 are not obvious over Kheiri in light of LeVaughn.

Claim 23 has been amended to overcome Examiner's objection.

Claim 29 has been cancelled.

Kheiri discloses in its specification that the end cap 25 is used to control the depth of the puncture. (Column 3, lines 57-58). As such, it appears that Kheiri consider depth of puncture an issue and did work the end cap into control this. As such, it is not obvious that a depth adjuster and cocking tube would have been part of the Kheiri invention as taught by Simons, et al. As such Applicant's dial adjuster and follower are not obvious over Kheiri, Simons et al., and LeVaughn.

Allowable Subject Matter

Claims 15-19 and 24 have been amended in accordance with the Examiner's suggestions to overcome the rejections.

Applicant would like to note that the member includes a collar and the two parts are not interchangeable and has clarified this in the above claims.


Authorization

The Director is hereby authorized to charge any additional fees which may be required for this Reply, or credit any overpayment, to Deposit Account No. 50-3791.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Director is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-3791.

Respectfully submitted,

Date: 9/25/06


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